

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Michael Gengler and Victor Harpley,
Cromwell

File No. 2009-125

FINDINGS AND CONCLUSIONS

The Complainants brought this Complaint pursuant to Connecticut General Statutes § 9-7b and alleged various violations of the campaign finance laws against individuals and a business entity, the acceptance of a prohibited business entity contribution by a candidate, and a failure to have a disclaimer on campaign literature, pertaining to the November 3, 2009 election in the Town of Cromwell. After an investigation of the Complaint, the Commission makes the following findings and conclusions:

1. On November 2, 2009, the Complainants filed the instant complaint alleging that a business called "WOW Fitness of Cromwell, LLC" (hereinafter "WOW Fitness") had violated General Statutes § 9-613 by purchasing an advertisement in the Volume 8, Number 10, November 2009 issue of *The Chronicle* newspaper in support of William F. Yeske, Jr., a candidate for Board of Selectman in the Town of Cromwell at the November 3, 2009 election.
2. Complainants also alleged that the advertisement described in paragraph 1 above violated General Statutes § 9-621, because it did not have a required attribution disclosing who paid for the advertisement.
3. General Statutes § 9-602, at all times relevant to this complaint, provided in pertinent part:

(a) *Except with respect to an individual acting on his own, no contributions may be made, solicited or received and no expenditures may be made, directly or indirectly, in aid of or in opposition to the candidacy for nomination or election of any individual or any party or referendum question, unless (1) the candidate or chairman of the committee has filed a designation of a campaign treasurer and a depository institution situated in this state as the depository for the committee's funds or (2) the candidate . . . has filed a certification in accordance with the provisions of section 9-604 or 9-605, as the case may be.*

...

[Emphasis added.]

4. General Statutes § 9-604 at all times relevant to this complaint, provided in pertinent part:

(b) The formation of a candidate committee by a candidate and the filing of statements pursuant to section 9-608 shall not be required if the candidate files a certification with the proper authority required by section 9-603, not later than ten days after becoming a candidate, and any of the following conditions exist for the campaign: (1) The candidate is one of a slate of candidates whose campaigns are funded solely by a party committee or a political committee formed for a single election or primary and expenditures made on behalf of the candidate's campaign are reported by the committee sponsoring the candidate's candidacy; (2) the candidate finances the candidate's campaign entirely from personal funds and does not solicit or receive contributions, provided if said candidate personally makes an expenditure or expenditures in excess of one thousand dollars to, or for the benefit of, said candidate's campaign for nomination at a primary or election to an office or position, said candidate shall file statements according to the same schedule and in the same manner as is required of a campaign treasurer of a candidate committee under section 9-608; ... If the candidate no longer qualifies for the exemption due to the condition stated in the candidate's certification but so qualifies due to a different condition specified in this subsection, the candidate shall file an amended certification with the proper authority and provide the new condition for the candidate's qualification not later than three business days following the change in circumstances of the financing of the candidate's campaign. The filing of a certification under this subsection shall not relieve the candidate from compliance with the provisions of this chapter.

[Emphasis added.]

5. Upon investigation it was determined that Mr. Yeske filed a Certification of Exemption from Forming a Candidate Committee (SEEC Form 1B) with the Cromwell Town Clerk's office on August 6, 2009 and amended that statement on August 10, 2009 correctly reporting the date of election as November 3, 2009, as instructed by the Cromwell Town Clerk. In the original and amended certificates of exemption Mr. Yeske indicated that he would be funding his campaign entirely with his own funds.
6. General Statutes § 9-613, provides in pertinent part:

(a) *No business entity shall make any contributions or expenditures to, or for the benefit of, any candidate's campaign for election to any public office* or position subject to this chapter or for nomination at a primary for any such office or position, or to promote the defeat of any candidate for any such office or position. No business entity shall make any other contributions or expenditures to promote the success or defeat of any political party, except as provided in subsection (b) of this section.
[Emphasis added.]
7. On or about October 10, 2009, an individual named Lou Soteriou gave Mr. Yeske \$50 to purchase an advertisement in *The Chronicle*. Mr. Soteriou was at all times relevant to this investigation the President of Wow Fitness. This contribution was in cash and from Mr. Soteriou personally, not from a business account of WOW Fitness. On October 12, 2009, Mr. Yeske purchased the aforementioned advertisement, and applied Mr. Soteriou's \$50 contribution as requested by Mr. Soteriou. The advertisement was in support of Mr. Yeske's campaign and cost a total of \$50.58.
8. The advertisement, detailed in paragraph 1 above, included an exhortation to vote for Mr. Yeske and was promotional of WOW Fitness. The Commission notes that that the expenditure in question should not have been used to promote WOW Fitness as a business entity, because campaign funds should be used exclusively to promote the candidate. *See* General Statutes § 9-607 (g).
9. When a candidate no longer qualifies for a 1B exemption, General Statutes § 9-604 (b) requires the candidate to amend his registration and form a candidate committee within three days of the triggering event.
10. Mr. Yeske amended his filing on October 10, 2009 with the Cromwell Town Clerk, after receiving funds from another individual. Specifically, he registered what he intended as a candidate committee *Yeske for Board of Selectman*, designating Alfred A. Diaz, its treasurer, and Jeremy Shingleton, his deputy treasurer. The Commission notes however that the form used in error by Mr. Yeske was, in fact, the *Party Committee Registration* (SEEC Form 2).

11. Upon investigation, the Commission finds that Mr. Diaz on October 26, 2009 filed an *Itemized Campaign Disclosure Statement* (SEEC Form 20) for *Yeske for Board of Selectman* for the 7th day preceding the election. Furthermore, while this campaign finance statement includes considerable detail, as well as evidence of contributor certification cards for all reported contributions, it does not disclose the \$50 contribution from Mr. Soteriou to Mr. Yeske, as detailed in paragraph 6 above.
12. The Commission concludes that there was no violation of General Statutes § 9-613 by WOW Fitness as alleged because the money donated, as detailed in paragraph 6 above, came from Mr. Soteriou's personal account and not a business entity account.
13. The Commission turns to the advertisement exhorting "Vote for Bill Yeske," detailed in paragraphs 1 and 8 above, and the alleged failure to provide an attribution for the aforementioned advertisement as required by General Statutes § 9-621.
14. At the time relevant to this complaint, General Statutes § 9-621 provided in pertinent part:

(a) No individual shall make or incur any expenditure with the consent of, in coordination with or in consultation with any candidate, candidate committee or candidate's agent, ..., and no candidate or committee shall make or incur any expenditure including an organization expenditure for a party candidate listing, as defined in subparagraph (A) of subdivision (25) of section 9-601, for any written, typed or other printed communication, or any web-based, written communication, which promotes the success or defeat of any candidate's campaign for nomination at a primary or election or promotes or opposes any political party or solicits funds to benefit any political party or committee unless such communication bears upon its face (1) the words "paid for by" and the following: (A) In the case of such an individual, the name and address of such individual; ...
[Emphasis added.]

15. The Commission concludes that Mr. Yeske, pursuant to General Statutes § 9-621 (a), should have included the words "paid for by," his name and address on the advertisement that is subject to this complaint, as a candidate purchasing that advertisement.

16. Upon investigation, the Commission finds that while Mr. Yeske failed to file the correct form designating a candidate committee, he nevertheless attempted in good faith to follow General Statutes §§ 9-602 and 9-604, by initially filing an exemption to forming a candidate committee because he was self-funding his campaign, and thereafter amending that exemption once he received funds from another individual.
17. The Commission further finds that while Mr. Yeske registered the incorrect type of committee, he did attempt to register a committee and designate a campaign treasurer, as required by the law, after receiving a contribution from another source, and followed the instructions of the Town Clerk pertaining to amending his original registration.
18. While these facts do not excuse Mr. Yeske's failure to comply with General Statutes § 9-621 (a), as detailed in paragraph 12 above, they nevertheless evidence attempts by Mr. Yeske to navigate, not circumvent, the campaign finance laws. For the reasons so stated, the Commission declines to further pursue the matter regarding the failure to include an attribution as required by General Statutes § 9-621.
19. General Statutes § 9-608, provides in pertinent part:
 - (c) (1) Each statement filed under subsection (a), (e) or (f) of this section shall include, but not be limited to: ***(A) An itemized accounting of each contribution, if any, including the full name and complete address of each contributor and the amount of the contribution;*** (B) in the case of anonymous contributions, the total amount received and the denomination of the bills; ***(C) an itemized accounting of each expenditure, if any, including the full name and complete address of each payee,*** including secondary payees whenever the primary or principal payee is known to include charges which the primary payee has already paid or will pay directly to another person, vendor or entity, the amount and the purpose of the expenditure, the candidate supported or opposed by the expenditure, whether the expenditure is made independently of the candidate supported or is an in-kind contribution to the candidate, and a statement of the balance on hand or deficit, as the case may be; ...
[Emphasis added.]
20. Upon investigation, the Commission finds that while Mr. Diaz reported the receipt of 12 contributions totaling \$1,146.00 by *Yeske for Board of Selectman*, he nevertheless failed to carry forward and disclose each contribution to Mr. Yeske's campaign, as required by General Statutes § 9-608, by omitting the \$50 contribution made by Mr. Soteriou detailed in paragraph 7 above.

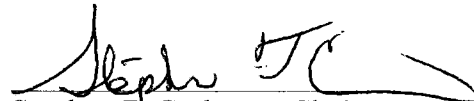
21. The Commission, for purposes of instruction and clarification, has determined that it will provide copies of this disposition to Mr. Yeske, Mr. Soteriou, Mr. Diaz, and the Cromwell Town Clerk's office, so that they are on notice of the correct filing and reporting requirements of General Statutes Title 9, Chapter 155, that are detailed herein, so that such errors or omissions can be avoided or corrected by such individuals in the future.
22. In consideration of the above findings and under these specific facts and circumstances, the Commission has determined to take no further action in this matter.

ORDER

The following Order is recommended on the basis of the aforementioned findings:

That no further action be taken.

Adopted this 22nd day of June, 2011 at Hartford, Connecticut.



Stephen F. Cashman, Chairperson
By order of the Commission